EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the matter of the application of

THE BANK OF NEW YORK MELLON (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures),

Petitioner Counter-Defendant,

-and-

BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Maiden Lane II, LLC (intervenor), Maiden Lane III, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisers, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), New York Life Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

-against-

THE PEOPLE OF THE STATE OF NEW YORK by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York,

Intervenor Counter-Plaintiff,

for an order pursuant to CPLR § 7701 seeking judicial instructions and approval of a proposed settlement.

Index No. 651786/2011

Assigned to: Kapnick, J.

VERIFIED PLEADING IN INTERVENTION

For his pleading in intervention pursuant to CPLR 401, 1012, 1013, and 1014, proposed Intervenor Counter-Plaintiff the People of the State of New York by ERIC T.

SCHNEIDERMAN, Attorney General of the State of New York, states and alleges upon information and belief as follows:

INTRODUCTION

1. In this proceeding under CPLR Article 77, Bank of New York Mellon ("BNYM," or "the Trustee"), the trustee for 530 New York trusts ("the Trusts") comprising hundreds of billions of dollars in residential mortgage-backed securities, seeks the Court's approval of a sweeping settlement of claims against the creators of those trusts (the "Proposed Settlement"), Countrywide Home Loans, Inc. and Countrywide Financial Corporation (collectively "Countrywide") and the servicers of the trusts, Bank of America ("BoA") or affiliated entities.[1]

2. The claims at issue arise from a massive collapse in value of the mortgage loans held by the trusts. This collapse resulted from widespread misconduct both in the origination of mortgage loans and in the creation and administration of the Trusts, all causing grave harm to borrowers, investors and to the integrity of the securities marketplace.

3. The New York State Attorney General intervenes pursuant to his statutory and common-law authority to safeguard the welfare of New Yorkers and the integrity of the securities marketplace. Thus, while the other investors that have or may become parties to this proceeding stand only for their own interests, the Attorney General by law is charged to protect the interests of all New York investors and the marketplace more broadly.

[1] On January 11, 2008, BoA agreed to acquire Countrywide Financial Corporation (the parent company of Countrywide Home Loans) in a reverse triangular merger. The transaction closed on July 1, 2008, and on October 6, 2008, BoA announced that Countrywide would transfer all or substantially all of its assets to unnamed subsidiaries of BoA.

4. The facts available at this time raise serious questions about the fairness and adequacy of the Proposed Settlement, as to both matters of procedure and substance. As to procedure, the Trustee's duty to negotiate the settlement in the best interests of investors in the trusts has been impaired because the Trustee stands to receive direct financial benefits under the Proposed Settlement. As to substance, the Proposed Settlement seeks to compromise investors' claims in exchange for a payment representing a fraction of the losses suffered and for provisions governing mitigation of losses that are non-binding and may well prove to be illusory.

5. The New York State Attorney General seeks to ensure that a fair and comprehensive resolution of all claims is reached and that no proposed settlement is approved absent adequate compensation to all injured parties.

6. In addition, the Attorney General alleges that BNYM's conduct, both specifically as to the negotiation of the Proposed Settlement and more generally as to the performance of its duties of trustee, has violated its fiduciary duty to investors, as well as the Martin Act (General Business Law Article 23-A) and Executive Law § 63(12).

I. BACKGROUND

7. On June 29, 2011, BoA (which bought Countrywide in early 2008) announced a settlement with BNYM, the trustee for numerous trusts created by Countrywide, including the 530 trusts covered by the Proposed Settlement. On or about the same day, BNYM commenced the instant Article 77 proceeding, seeking "an order, among other things, (i) approving the Proposed Settlement, and (ii) declaring that the

Proposed Settlement is binding on all Trust Beneficiaries and their successors and assigns."[2]

8. In its petition, BNYM describes the Proposed Settlement as resolving a number of claims against Countrywide and BoA, including:

- Countrywide's failure to comply with its representations and warranties in the governing agreements creating the trusts, known as Pooling and Servicing Agreements or PSAs.
- Countrywide's and BoA's breaches of those agreements' requirements that the servicers maintain adequate mortgage files and correct any deficiencies in those files.
- Countrywide's and BoA's overcharging of fees and other costs for their inadequate recordkeeping and other services.

9. To resolve these and related claims, the Proposed Settlement contains three principal elements: a cash payment, changes to loan servicing methods (including loan modification and loss mitigation programs), and provisions regarding the cure of mortgage file deficiencies.[3]

- The cash payment is intended to compensate investors for losses from non-performing loans. BoA and/or Countrywide agree to pay $8.5 billion to investors, allocable among the trusts according to a formula based on the past and estimated future losses suffered by each of the trusts.[4]
- The changes to servicing methods encompass (among other things) a loss-mitigation program authorizing BoA/Countrywide to evaluate individual

[2] Trustee Petition at ¶ 16.
[3] Proposed Settlement at ¶¶ 3, 5, 6.
[4] Settlement ¶ 3.

borrowers' eligibility and suitability for a variety of modification programs or for other remedies in lieu of foreclosure, although these loss-mitigation provisions do not obligate BoA or Countrywide to undertake any specific loan modifications or prescribe any standards according to which loan modifications must be extended.

- The cure provisions propose procedures under which BoA/Countrywide will perform, and BNYM as trustee will monitor, the reconstruction of otherwise deficient mortgage files and restore the rights to collateral underlying the trusts' certificates.

10. As this Court is aware, only 22 investors directly participated in the negotiation and formation of the proposed settlement. Several groups of investors proposing to intervene as respondents have raised multiple objections to the Proposed Settlement's adequacy and the Trustee's conflicts of interest in negotiating the Proposed Settlement.

II. THE INTEREST OF THE NEW YORK STATE ATTORNEY GENERAL

11. The New York State Attorney General has both common-law *parens patriae* and statutory interests in protecting the economic health and well-being of all investors who reside or transact business within the State of New York. *See People ex rel. Spitzer v. Grasso*, 11 N.Y.3d 64, 69 n.4 (2008) ("[C]ourts have held that a state has a quasi-sovereign interest in protecting the integrity of the marketplace."); *State v. 7040 Colonial Road Associates Co.*, 176 Misc. 2d 367, 374 (N.Y. Sup. Ct. 1998) ("[T]he Attorney General is empowered not only to protect the investing public at large from misleading statements and omissions in connection with the sale of securities, but also to seek redress on behalf of individual investors who have been the victims of Martin Act

violations."). The Attorney General also has an interest in upholding the integrity, efficacy, and strength of the financial markets of New York State, as well as an interest in upholding the rule of law generally. *See People v. Morris*, 2010 WL 2977151, at *13 (N.Y. Sup. Ct. July 29, 2010) ("State Blue Sky securities acts such as the Martin Act represent considered legislative judgments of individual States to preserve the honesty and therefore investor confidence and the efficacy of the securities and capital markets.").

12. As described below, the Attorney General believes that the Proposed Settlement is unfair to trust investors, many of whom are New York residents. Many of these investors have not intervened in this litigation and, indeed, may not even be aware of it. The Pooling and Servicing Agreements ("PSAs") that govern the creation and administration of the Trusts permit such participation only by investors who individually or jointly hold a twenty five percent or greater interest in the trust, typically representing hundreds of millions of dollars.

13. The Attorney General's investigation of BNYM to date reveals that BNYM breached its duties to the Trusts' investors in violation of the common law of the State of New York, engaged in repeated fraud and illegality in violation of Executive Law §§ 63(1) and 63(12), and breached General Business Law §§ 352 *et seq*. (the "Martin Act") by engaging in improper conduct in connection with the sale of securities.

A. THE PROPOSED SETTLEMENT IS UNFAIR AND INADEQUATE

14. On the facts currently available, the Attorney General believes that the Proposed Settlement is both procedurally and substantively flawed.

15. In negotiating the Proposed Settlement, BNYM labored under a conflict of interest because it stands to receive direct financial benefits under the deal as currently structured. As trustee, BNYM owed and owes a fiduciary duty of undivided loyalty to

trust investors, and its direct financial interest in the consummation and approval of the settlement violates that duty of strict loyalty.

16. The Proposed Settlement advances BNYM's own financial interests most clearly by broadening its rights to indemnification for losses to investors or others. Under the PSAs,[5] Countrywide agreed to indemnify the Trustee for certain claims arising out of the Trustee's duties. (*See* Settlement ¶ 16 & Exhibit C (agreement between Countrywide and BNYM).) But as BNYM concedes in its petition here (Petition ¶¶ 78-81), Countrywide has inadequate resources. A side-letter agreement appended to the Proposed Settlement expands the benefit of the PSAs' indemnification provisions by having BoA, now Countrywide's parent company, expressly guarantee the indemnification obligations of Countrywide. In addition, the Proposed Settlement expands the indemnification to cover BNYM's negotiation and implementation of the terms of the settlement, thus shielding the trustee from significant forms of liability in connection with the formation and implementation of a settlement which seeks to compromise the claims of the investors to whom BNYM owes fiduciary duties.

17. As to the substance of the Proposed Settlement, the proposed cash payment is far less than the massive losses investors have faced and will continue to face. And the Settlement's provisions for servicing improvements and mortgage file reconstruction are vague and may prove harmful to investors, as well as many borrowers whose poorly serviced loans are at the heart of the collapse of the trusts at issue.

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[5] All but seventeen of the Trusts used PSAs, with the remainder using indentures and SSAs. The terms relevant to the Settlement are for practical purposes largely similar, and for simplicity's sake this Petition will quote only PSAs. As does the Bank of New York Mellon, this Petition will refer generally to PSAs, indentures and SSAs as "Governing Agreements." In the Matter of the Application of Bank of New York Mellon (as trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), Petitioner, for an order pursuant to CPLR § 7701, seeking judicial instructions and approval of a proposed settlement, Verified Petition dated June 28, 2011 ("Trustee Petition") at ¶ 2-3.

18. Given the steeply discounted cash payment, the value of any non-monetary consideration is a crucial element in evaluating the Proposed Settlement's fairness. Here, the Attorney General believes that the proposed settlement's purported servicing improvements are too vague and ill-defined to provide any concrete value to investors.

19. The servicing improvements encompass several methods for dealing with high-risk loans, including loss-mitigation provisions that require the servicers to consider whether borrowers are eligible for modification programs. Because performing loans (even when restructured) yield greater returns to investors than foreclosed properties, meaningful servicing improvements and loss-mitigation efforts are essential to adequately compensate investors. As written, however, the Proposed Settlement's provisions regarding servicing improvement are so vague and permissive that they fall far short of achieving this goal.

20. For example, the loan servicing improvements call for "high-risk" loans to be placed with subservicers meeting certain qualifications, but they say nothing about the methods the subservicers are required to use in servicing the high-risk loans—the matter of most importance to investors looking to recoup or salvage value from loans at risk.[6] Of even more concern is the fact that the Proposed Settlement identifies loan modifications as an important way to mitigate losses, but expressly makes loan modifications wholly optional: "nothing [in the relevant provision] shall be deemed to create an obligation . . . to offer any modification or loss mitigation strategy to any borrower."[7] Moreover, while the proposed settlement describes a methodology for

[6] *Id.* ¶ 5.

[7] Settlement ¶ 5(d).

choosing loss-mitigation strategies, it includes a substantial escape hatch by allowing servicers to make decisions based on "such other factors as would be deemed prudent in [the servicer's] judgment."[8]

21. Thus, the Proposed Settlement imposes no concrete requirements or procedures on servicers with respect to loan modification. The lack of objective standards leaves to servicer discretion such important decisions as principal and interest write-downs, forbearance, or penalty abatements. The lack of definite standards for "high-risk" loans is inadequate to ensure that BoA will afford sufficient borrower relief and thereby stabilize RMBS loan pools to the benefit of investors.

22. The inadequacy of these provisions is all the more troubling because BoA has a poor track record in the area of loss mitigation. Indeed, the Treasury Department recently withheld incentive payments from BoA under a federal loss-mitigation program due to BoA's poor performance in administering loan modifications.[9] Likewise, BoA has been subject to lawsuits asserting that it has repeatedly withheld reasonable modifications,[10] and has been cited by the Treasury for poor performance as to loan modifications.[11]

B. BNYM'S VIOLATIONS OF NEW YORK STATE LAW

1. BNYM Was Aware Of the Trusts' Failure To Transfer Loans

23. Almost all of the Trusts were governed by PSAs, which define the Trustee's duties. One of BNYM's primary obligations as trustee under these PSAs was

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[8] *Id.* ¶ 5(d)-(e).

[9] *See e.g.*, Dina ElBoghdady, *Federal Payments Halted to Three Mortgage Servicers*, Washington Post (June 8, 2011).

[10] *See, e.g.*, *Fraser v. Bank of America*, Index No. 4:10-cv-02400-AGF (E. D. Mo. Dec. 22, 2010); *In re Bank of America Home Affordable Modification Program (HAMP) Contract Litigation*, 10-MD-02193 (D. Mass. 2010).

[11] Dawn Kopecki, *Bank of America Among the Worst for Loan Modifications*, Bloomberg (August 4, 2009), available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aoO9FGsvnJOk.

to ensure the proper transfer of loans from Countrywide to the Trusts. The ultimate failure of Countrywide to transfer complete mortgage loan documentation to the Trusts hampered the Trusts' ability to foreclose on delinquent mortgages, thereby impairing the value of the notes secured by those mortgages. These circumstances apparently triggered widespread fraud, including BoA's fabrication of missing documentation.

24. PSAs require actual delivery to the trust of original mortgage documents and assignments of the mortgages in favor of the trust or in blank. For example, a PSA for one of the Trusts, CWALT 2006 OC-7, between BNYM as trustee, Countrywide Financial Corporation and others (hereinafter referred to as the "Trust PSA")[12] provides that as part of the transfer and assignment, "the Depositor has delivered or caused to be delivered to the Trustee … for the benefit of the Certificateholders" a number of mortgage-related documents.[13] Proper transfer of these loans was defined by the PSA as including:

> the original Mortgage Note endorsed by manual or facsimile signature in blank in the following form: 'Pay to the order of _____ without recourse,' with all intervening endorsements showing a complete chain of endorsement from the originator to the Person endorsing the Mortgage Note (each such endorsement being sufficient to transfer all right, title and interest of the party so endorsing, as noteholder or assignee thereof, in and to that Mortgage Note).[14]

25. To ensure that the mortgage files are intact, PSAs require the Trustee to promptly review the mortgage loan documentation delivered by Countrywide and make an initial certification as to its completeness, noting any defects. For example, the Trust

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[12] Pooling and Service Agreement dated as of August 1, 2006, Alternative Loan Trust 2006-OC-7, between CWALT, Inc., Depositor, Countrywide Home Loans, Inc., Seller, Park Granada LLC, Seller, Park Monaco Inc., Seller, Park Sienna LLC, Seller, Countrywide Home Loans Servicing LP, Master Servicer, and The Bank Of New York, Trustee ("Trust PSA").

[13] Trust PSA § 2.01(c).

[14] Trust PSA § 2.01(c)(i)(A).

PSA states that "[t]he Trustee agrees to execute and deliver on the Closing Date to the Depositor, the Master Servicer and Countrywide … an Initial Certification …. Based on its review and examination … the Trustee acknowledges that such documents appear regular on their face and relate to the Mortgage Loans."[15]

26. Moreover, the PSAs require BNYM to issue a certification of compliance, with exceptions detailing any issues it has identified during the course of its review.[16] The exceptions can range from minor defects to problems of major significance, such as a missing promissory note or assignment. Pursuant to this provision, BNYM has generated exception reports for each mortgage pool held in each of the Trusts, usually identifying great numbers of files that are incomplete and improperly documented. Notably, the Proposed Settlement provides for a process to reconstruct or correct the extensive deficiencies noted in the exception reports.

27. These provisions are central to any mortgage securitization, but they are now vitally important to trust investors in light of the housing market collapse. Any action to foreclose requires proof of ownership of the mortgage. This must be demonstrated by actual possession of the note and mortgage, together with proof of any chain of assignments leading to the alleged ownership. Moreover, complete mortgage files give borrowers assurance that their properties are properly foreclosed upon. The failure to properly transfer possession of complete mortgage files has hindered numerous foreclosure proceedings and resulted in fraudulent activities including, for example,

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[15] Trust PSA § 2.02(a).

[16] Trust PSA § 2.02(a) ("Not later than 90 days after the Closing Date, the Trustee shall deliver to the Depositor, the Master Servicer and Countrywide (on its own behalf and on behalf of Park Granada, Park Monaco and Park Sienna) a Final Certification with respect to the Mortgage Loans … with any applicable exceptions noted thereon.").

"robo-signing." These fraudulent activities have burdened borrowers as well as the courts with flawed foreclosure proceedings.

28. BNYM knew the scope of the loan documentation deficiencies because it issued detailed exception reports for the Trusts. These deficiencies impaired the value of the securities by compromising the collateral and imposing additional servicing costs.

2. BNYM Violated New York Law By Breaching Its Duty To Notify Certificateholders

29. Once a trustee learns of an obligor's default—here, Countrywide's failure to deliver complete mortgage files to the Trustee—the trustee is held to a "prudent man" standard of care under New York common law and Article 4-A of the Real Property Law (the "RPL"). *See Ambac Indemnity Corp. v. Bankers Trust Co*., 573 N.Y.S.2d 204, 207 (Sup. Ct. N.Y. Co. 1991) (discussing the obligation of "the trustee in the event of default to carry out his duties with the care and skill a prudent man would use in the conduct of his own affairs."); N.Y. Real Prop. Law Art. 4-A § 126(1) (mandating that trust instruments concerning real estate mortgages and interests therein impose a duty on trusts, in the event of a default, "to exercise such of the rights and powers vested in the trustee by such instrument, and to use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.").

30. This rule required BNYM to notify investors that the loans securing their notes were impaired by Countrywide's defaults. PSAs define "Servicer Events of Default" to include:

> any failure by the Master Servicer to observe or perform in any material respect any other of the covenants or agreements on the part of the Master Servicer contained in this Agreement (except with respect to a failure related to a Limited Exchange Act Reporting Obligation), which failure

> materially affects the rights of Certificateholders, that failure continues unremedied for a period of 60 days after the date on which written notice of such failure shall have been given to the Master Servicer by the Trustee….[17]

The Trustee gave such notice to Countrywide in the form of exception reports for each of the 530 Trusts.

31. The Trustee's knowledge of an event of default is presumed when "a Responsible Officer of the Trustee shall have received written notice thereof."[18] Such notice was actual and abundant, as evidenced by (1) BNYM's own detailed exception reports, (2) widespread news coverage of foreclosure fraud, and (3) foreclosure actions brought on BNYM's behalf. Indeed, the Attorney General's own investigation revealed numerous foreclosure actions brought on BNYM's behalf which were improperly brought against New York homeowners. A review of the records in the Bronx, New York and Westchester County Clerk's offices reveals that BNYM failed to ensure that notes were transferred to some of the Trusts:

- In a number of actions the mortgage note was not assigned to the Trustee prior to the foreclosure action. For example, in *Bank of New York v. Kirkland*, Bank of New York, as trustee for the Certificateholders CWABS, Inc. Asset-Backed Certificates, Series 2006-8, conceded that the mortgage at issue was "to be assigned by an Assignment to be recorded in the Office of the Clerk of WESTCHESTER County."[19]

- In other cases, the note was allegedly transferred just days before the foreclosure action was brought. In *Bank of New York v. Gioio*, for example, Bank of New York, as trustee for the Benefit of CWABS, Inc. Asset-Backed Certificates, Series 2007-13, alleged that the mortgage was assigned two days before the action was filed.[20]

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17 Trust PSA § 7.01(ii).

18 Trust PSA § 8.02(viii).

19 *See* Complaint ¶ 3 (index no. 07-16839, filed Sept. 4, 2007).

20 *See* Complaint ¶ 3 (index no. 08-9865, filed Apr. 30, 2008) (mortgage "duly assigned by assignment dated the 28th day of April, 2008, and sent for recording in the Office of the Clerk of WESTCHESTER County.").

Despite these clear indicators, BNYM did not notify any of the parties or seek to halt Countrywide's widespread fraud in improperly prosecuting foreclosure actions.

32. The *Kemp v. Countrywide Home Loans, Inc.*, 440 B.R. 624, 629 (D.N.J. Bankr. 2010) case demonstrates that the failures to maintain adequate documentation were widespread as to Countrywide-created RMBS trusts. In *Kemp*, a mortgage foreclosure operations official from BoA testified, and the court found, that it was "customary" for Countrywide "to maintain possession of the original note and related loan documents," rather than transferring those documents to the trustees. *Id*. at 628.

33. Indeed, BNYM's own Petition concedes that among claims to be resolved was conduct qualifying as servicer events of default, including:

> Master Servicer breaches of the PSAs, including for example failure "to notify the Trustee and others of Countrywide's breaches of representations and warranties,"[21] and generally placing its interests before those of the investors in breach of the PSAs by among other things "(i) failing to maintain accurate and adequate loan and collateral files in a manner consistent with prudent mortgage servicing standards; (ii) failing to demand that the Sellers cure deficiencies in mortgage records; (iii) incurring avoidable and unnecessary servicing fees as a result of its allegedly deficient record-keeping; and (iv) overcharging by as much as 100% the costs for maintenance, inspection and other services with regard to defaulted Mortgage Loans"[22]

34. Thus, BNYM's knowledge that Countrywide consistently defaulted on its duties triggered the Trustee's heightened duty to certificateholders. At the very least, this heightened duty required BNYM to notify investors – who were relying on BNYM to protect their interests – of Countrywide's defaults.

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21 *Id.* ¶ 29.

22 *Id.* ¶ 30.

CLAIMS AGAINST BNYM

FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty – New York Common Law)

35. The Attorney General repeats and re-alleges paragraphs 1 through 35 herein.

36. The acts and practices of BNYM alleged herein violated New York law in that BNYM owed a fiduciary duty to the trust investors, and breached that duty to their detriment and disadvantage, by failing to notify them of issues regarding the quality of loans underlying their securities after having learned of "events of default," and negotiating the proposed settlement while laboring under a conflict of interest and acting to serve its own ends.

SECOND CAUSE OF ACTION
(Persistent Fraud or Illegality – Executive Law § 63(12))

37. The Attorney General repeats and re-alleges paragraphs 1 through 37 herein.

38. The acts and practices of BNYM alleged herein constitute conduct proscribed by § 63(12) of the Executive Law, in that BNYM engaged in repeated and persistent fraud and illegality by misleading trust investors to believe that: (1) Countrywide had delivered to BNYM complete and adequate mortgage files relating to the hundreds of thousands of mortgages held by the Trusts; (2) BNYM had, in fact, confirmed the completeness and adequacy of those mortgage files. In violation of New York common law and the RPL, BNYM knowingly, repeatedly, and consistently failed to notify the Trusts' investors of Countrywide's defaults.

39. As the abuses described above were repeated literally hundreds of times, BNYM's conduct violated Executive Law § 63(12).

THIRD CAUSE OF ACTION
(Securities Fraud – General Business Law § 352-c(1)(a) and (c))

40. The Attorney General repeats and re-alleges paragraphs 1 through 40 herein.

41. The acts and practices of BNYM alleged herein violated Article 23-A of the General Business Law, in that they involved the use or employment of fraud, including acts having a tendency to deceive or mislead, and involved material omissions, deceptions, concealments, suppressions, false pretenses, and the use or employment of representations or statements which were false, where BNYM: (i) knew the truth, (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or statement made; and such actions were engaged in to induce or promote the issuance or sale within or from this state of securities.

42. BNYM's conduct described violated the Martin Act insofar as the Trust PSA requires the Trustee to annually certify the following "servicing criteria":

- "Collateral or security on mortgage loans is maintained as required by the transaction agreements or related mortgage loan documents;"
- "Mortgage loan and related documents are safeguarded as required by the transaction agreements;" and
- "Any additions, removals or substitutions to the asset pool are made, reviewed and approved in accordance with any conditions or requirements in the transaction agreements."[23]

[23] *See generally* Trust PSA, Exhibit W.

43. Thus, investors in the Trusts were misled by BNYM into believing that BNYM would review the loan files for the mortgages securing their investment, and that any deficiencies would be cured.

CONCLUSION

WHEREFORE, proposed Intervenor Counter-Plaintiff demands judgment against Petitioner as follows:

A. Entering an order rejecting the Proposed Settlement as presented;

B. Directing that Petitioner Counter-Defendant, pursuant to Article 23-A of the General Business Law and Section 63(12) of the Executive Law and the common law of the State of New York, disgorge all gains, pay all penalties and pay all restitution and damages caused, directly or indirectly, by the fraudulent and deceptive acts complained of herein;

C. Directing that Petitioner pay Intervenor Counter-Plaintiff's costs, including attorneys' fees as provided by law;

D. Directing such other equitable relief as may be necessary to redress Petitioner Counter-Defendant's violations of New York law; and

E. Granting such other and further relief as may be just and proper.

Dated: August 4, 2011
New York, New York

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: _____
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Of Counsel:

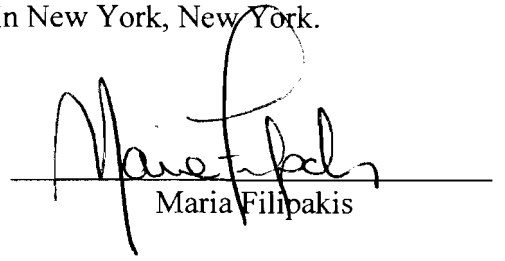
DANIEL S. ALTER
MARC B. MINOR
THOMAS TEIGE CARROLL
AMIR WEINBERG

VERIFICATION

I, Maria Filipakis, hereby affirm under the penalty of perjury that the following is true and correct:

I am a member of the bar of this Court and Special Deputy Attorney General in the Office of the New York State Attorney General. I have read the foregoing Pleading in Intervention and know the contents thereof. All statements of fact therein are true and correct to the best of my knowledge and belief.

Executed this Fourth Day of August, 2011, in New York, New York.



Maria Filipakis